

REMARKS

I. Status of Claims

Claims 1-3, 7-58, and 62-83 are currently pending in this application. Claims 4-6 and claims 59-61 have been canceled. Claims 1, 63, 78, and 83 are currently amended.

Support for the amendments to claims 1, 78, and 83 may be found, for example, in original claims 6 and 61, and on pages 3-4, paragraph [016] of the specification. Specifically, independent claim 1 has been amended to incorporate some of specific amides of an alkanolamine and a C₁₄-C₃₀ fatty acid listed in dependent claim 6, as well as the limitation of claim 61 specifying the ratio by weight of the at least one amide of an alkanolamine and a C₁₄-C₃₀ fatty acid to the at least one associative polymer ranging from 5 to 20. Accordingly, claims 6 and 61 have been canceled without prejudice or disclaimer. Independent claims 78 and 83 have also been amended to include the same specific amides of an alkanolamine and a C₁₄-C₃₀ fatty acid of claim 6 and the ratio limitation of claim 61.

Additionally, claim 63 has been amended to correct a typographical error in the dependency, as the ratio claimed therein does not fall within the range of ratios claimed in claim 61, upon which it depends. Claim 63 has been amended such that it now properly depends from claim 62.

No new matter has been added by these amendments.

II. Rejections under 35 U.S.C. § 103(a)

A. Cottard in view of Grollier

Claims 1-45, 47, 55, 56, and 59-83 have been rejected under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent Application Publication No. 2001/0023514 A1 to Cottard et al. ("Cottard") in view of U.S. Patent No. 4,357,141 to Grollier et al. ("Grollier"). Although claims 1, 78, and 83 have been amended and claims 4-6 and 59-61 canceled, Applicants traverse this rejection to the extent it applies to the currently pending claims.

The Office alleges that Cottard "teaches and suggests the use of fatty amides in the oxidizing composition and wherein the oxidizing composition is mixed or combined with a dyeing composition to form an oxidation dyeing composition that [is] applied to the hair." Office Action at 2 (citations omitted). The Office further alleges that Grollier "teaches the claimed species oleic diethanolamide and stearic monoethanolamide as the conventional [adjuvants] that [are] used in an oxidative dyeing composition[]." *Id.* at 2-3 (citations omitted). The Office then concludes that "there is a clear suggestion and sufficient modification to one having ordinary skill in the art to be motivated to incorporate the fatty amides as the conventional adjuvant as taught by Grollier . . . in the dyeing composition of Cottard . . . to arrive at the claimed invention." *Id.* at 3.

Applicants disagree, for the reasons already of record and in view of the present amendments to the pending claims, the Examiner has failed to establish a *prima facie* case of obviousness in the combination of Cottard and Grollier.

As Applicants previously explained, in making a rejection under 35 U.S.C. § 103, the Office has the initial burden to establish a *prima facie* case of obviousness.

M.P.E.P. § 2143. To meet this burden, the Office must establish not only that the cited references teach or suggest all of the claim limitations, but also must point to some objective teaching in the references, coupled with the knowledge generally available to one of ordinary skill in the art at the time of the invention, that would have motivated one of ordinary skill to combine reference teachings with a reasonable expectation of success in obtaining the presently claimed invention. See M.P.E.P. §§ 2143.01 and 2143.02; *In re Fine*, 5 U.S.P.Q.2d 1596, 1598, 837 F.2d 1071, 1074 (Fed. Cir. 1988). Moreover, the Office must consider each reference for what that reference teaches as a whole, including portions that would teach away from the claimed invention. See M.P.E.P. § 2141.03(IV). In the present case, the Office has not established that all the limitations of the present claims can be found in the cited art, nor has the Office provided specific motivation for the proposed combination. Thus, the Office has not established a *prima facie* case of obviousness.

Initially, Applicants note that claims 1, 78, and 83 have been amended to recite specific amides of an alkanolamine and a C₁₄-C₃₀ fatty acid, including oleic acid diethanolamide, myristic acid monoethanolamide, soya fatty acid diethanolamide, stearic acid ethanolamide, linoleic acid diethanolamide, stearic acid monoethanolamide, behenic acid monoethanolamide, erucic acid diethanolamide, and ricinoleic acid monoethanolamide. The claims were also amended to incorporate the ratio by weight of the at least one amide of an alkanolamine and a C₁₄-C₃₀ fatty acid to the at least one associative polymer ranging from 5 to 20.

In view of the presently amended claims, the combination of Cottard and Grollier fails to teach or suggest all of the claim limitations. Aside from the general reference to

the genus of fatty amides in a listing of components included in the oxidizing composition of the Example, see paragraph [0370], Cottard only refers to “fatty amides” one other time, in paragraph [0324] where it lists examples of nonionic surfactants for incorporation into the disclosed compositions, which include polyethoxylated fatty amides and polyglycerolated fatty amides. Cottard also identifies the specific fatty amide monoisopropanolamide of coprah acid in the dyeing composition in paragraph [0371]. The skilled artisan considering the disclosure of Cottard as a whole would not necessarily assume the generic teaching of “fatty amide” in the Example is a teaching that the entire genus of fatty amides would be useful in the disclosed composition, but rather, would assume the “fatty amide” used in the example is one of those specifically taught therein.

Grollier, on the other hand, only discloses fatty amides as “conventional adjuvants” in dye compositions and then lists lauric or oleic diethanolamide, mono- or diethanolamide of copra, and stearic monoethanolamide as the preferred fatty amides. See col. 6, l. 67 to col. 7, l. 26). Thus, neither Cottard nor Grollier, alone or in combination, teach or suggest the amides recited in the present claims, *i.e.*, at least one amide of an alkanolamide and a C₁₄-C₃₀ fatty acid being chosen from oleic acid diethanolamide, myristic acid monoethanolamide, soya fatty acids diethanolamide, stearic acid ethanolamide, linoleic acid diethanolamide, stearic acid monoethanolamide, behenic acid monoethanolamide, erucic acid diethanolamide, and ricinoleic acid monoethanolamide.

Furthermore, the combination of Cottard and Grollier does not teach the claimed specific range of ratios of the fatty amide to the associative polymer. Both elements are

not even present together in either of the references. Therefore, the Office has not and cannot establish a *prima facie* case of obviousness, at least because the combination Cottard and Grollier do not meet all the limitations of the claims.

Moreover, the Office has not provided any evidence, either in the references or in the knowledge generally available to one of ordinary skill in the art, that would motivate one to modify the references in the suggested manner. As discussed above, neither Cottard nor Grollier suggests the amides recited in the present claims or the specific ratios of the fatty amide to the associative polymer. Nowhere does Cottard suggest that the specific fatty amides disclosed therein could be exchanged for the presently claimed amides. Likewise, Grollier does not suggest that one of ordinary skill in the art could exchange the specific fatty amides disclosed therein for the presently claimed amides. Such a specific suggestion for modification requires pointed guidance and motivation that is simply not provided by either of the references. Any assertion to the contrary could only come from impermissible hindsight.

Accordingly, for at least the reasons discussed above, Applicants respectfully request reconsideration of the rejection.

B. Cottard in view of Grollier and Laurent

Claims 46, 48-54, and 57-58 have been rejected under 35 U.S.C. § 103(a) as allegedly obvious over Cottard in view of Grollier and further in view of U.S. Patent Application Publication No. 2002/0046431 A1 to Laurent et al. ("Laurent"). Applicants respectfully traverse this rejection.

The Office relies on Cottard and Grollier for the reasons set forth above. The Office further relies on Laurent merely for its alleged disclosure of a cationic

polyurethane. See Office Action at 3. The Office still has not established a *prima facie* case of obviousness, however, because this combination of three references still fails to teach all the limitations of the claims. As discussed above, the Office's proposed combination of Cottard and Grollier lacks the specific amides and specific ratios of amide to associative polymer of the present claims, and therefore, does not meet all the limitations of the claims. Laurent does not rectify this deficiency. Specifically, Laurent, does not teach the at least one amide of an alkanolamine and a C₁₄-C₃₀ fatty acid which is chosen from oleic acid diethanolamide, myristic acid monoethanolamide, soya fatty acids diethanolamide, stearic acid ethanolamide, linoleic acid diethanolamide, stearic acid monoethanolamide, behenic acid monoethanolamide, erucic acid diethanolamide, and ricinoleic acid monoethanolamide. Laurent only discloses a coconut acid monoisopropanolamide in a dye composition, which does not fall within the claimed amides. See paragraph [0493]. Laurent's generic disclosure of a fatty amide is in the oxidizing composition of the Example. See paragraph [0494]. Thus, even assuming *arguendo*, that Laurent did teach a cationic polyurethane as the Office alleges, the Office still fails to establish a *prima facie* case of obviousness because Laurent lacks the specific at least one amide of an alkanolamine and a C₁₄-C₃₀ fatty acid of the present claims. Moreover, the combination of references does not teach the specific range of ratios of fatty amide to associative polymer, as both elements are not present together in any of the references.

Accordingly, the Office has failed to establish a *prima facie* case of obviousness, and Applicants respectfully request reconsideration of the rejection.

III. Conclusion

Applicants respectfully request that this Submission and Amendment under 37 C.F.R. § 1.114 be entered by the Examiner, placing claims 1-3, 7-58, and 62-83 in condition for allowance.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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